

**GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT**

(G.O. Rt. No. 115/Lab./AIL/J/2014, dated 13th August 2014)

NOTIFICATION

Whereas, an award in I.D. (L) No. 11/2012, dated 11-7-2014 of the Labour Court, Puducherry in respect of the industrial dispute between the Managing Director, M/s. Pond's Exports Limited, Villupuram and Thiru K. Muralidharan, over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O.Ms. No. 20/91/Lab/L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said award shall be published in the official gazette, Puducherry.

(By order)

S. THAMMU GANAPATHY,
Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PONDICHERRY

Present : Tmt. S. MARY ANSELAM, M.A., M.L.,
Presiding Officer (FAC),
Labour Court.

Friday, the 11th day of July 2014

I.D. (L) No. 11/2012

K. Muralidharan . . . Petitioner

Versus

The Managing Director,
M/s. Pond's Exports Limited,
Tamil Nadu. . . . Respondent

This industrial dispute coming on 27-6-2014 for final hearing before me in the presence of Thiruvalargal N. Baptiste Augustin, P.V. Jagatish, B. Vasantha Kumar and S. Prabu, Counsel for the petitioner and Thiruvalargal L. Sathish, T. Pravin, S. Velmurugan, V. Veeragavan and P. Rajesh, Counsel for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following :

AWARD

This industrial dispute has been referred as per the G.O. Rt. No. 43/AIL/Lab./J/2012, dated 19-3-2012 for adjudicating the following:

(1) Whether the dispute raised by Thiru K. Muralidharan against the management of M/s. Pond's Exports Limited, over non-employment is justified?

(2) If justified, to what relief the petitioner is entitled to?

(3) To compute the relief in terms of money, if it can be so computed?

2. The facts giving rise to this industrial dispute as stood exposted from the claim petition runs thus:-

The petitioner worked with respondent for nearly 15 years. He has been continuously employed for 13 years. His wife was sick from 20-12-2007 to 31-1-2008. Hence, he took leave on those days. He sent letter through Govindan to respondent seeking extension of leave from 1-2-2008 to 28-2-2008. No charge sheet was framed against or furnished to petitioner which amounts to denial to natural justice. He was not intimated about the name of Enquiry Officer, the date, time and place of enquiry and copy of enquiry proceedings, dated 26-4-2008. He was not furnished with dismissal order, dated 13-10-2008. He is entitled to back wages from 1-1-2008 to till date. There was a bias in the enquiry conducted by Enquiry Officer. The charges against the petitioner were not proved because of non-examination of management representative. He was forced to accept the content of 1st show cause notice by the Enquiry Officer. The Enquiry Officer had obtained any confession statement during the course of enquiry and the letter of petitioner, dated 13-5-2008 admitting the charges against him is violative of Article 20(3) of Indian Constitution. The written statement, dated 13-5-2008 was made by him against his own free will and is violative of human rights. EPF and ESI benefits were denied to the petitioner. The termination of petitioner is an act of victimisation. His termination amounts to retrenchment within the meaning of section 2 (oo) of Industrial Disputes Act and it is void.

3. *Per contra*, traversing the averments the claim statement, the respondent filed the counter with the averments which runs thus:

The petitioner was unauthorised absentee. He was charge sheeted under charge sheet, dated 21-3-2008. Since, he did not receive 1st show cause notice-cum-charge sheet, dated 21-3-2008 was published in the Tamil daily Thinamalar on 17-4-2008. He has acknowledged

the paper publication and he participated in the enquiry proceedings without any protest. Respondent's representative was examined in the enquiry proceedings and even marked exhibits in the presence of present petitioner. The petitioner himself has admitted the charges levelled against him and he gave a letter to that effect which were marked in the enquiry proceedings by the Enquiry Officer. The enquiry was conducted in a free and fair manner giving full opportunity to the petitioner to disprove the charges. The petitioner was given copies of all the proceedings, documents, list of witnesses, enquiry reports and show cause notices in the course of enquiry and only after taking into consideration his chronic absenteeism he was dismissed from services. The enquiry report was sent to his new address furnished by him in the enquiry proceedings but, the same was returned. The same was again published in the Dinamalar newspaper on 28-9-2008. The respondent had suspended its activities since October 2008. The Voluntary Retirement Scheme was announced by respondent on 21-10-2008 for the workers who were then working, but, the petitioner was dismissed from service on 27-9-2008 itself. The activities in the company have already suspended due to unviability of the company. Therefore, there is no scope for reinstatement. The petitioner does not deserve any other relief. Therefore, this present industrial dispute must be dismissed.

4. On the side of the petitioner, PW1 was examined and Ex.P1 to Ex.P14 were marked. During cross-examination of PW1, Ex. R1 to R3 were marked through PW1. On the side of the respondent, RW1 was examined, and Ex. R4 to Ex. R11 were marked.

5. *The point for consideration is:*

Whether the industrial dispute can be allowed?

6. *On this point :*

It is admitted by the respondent that the leave applied by the petitioner from 20-12-2007 to 31-1-2008 was granted. Then the petitioner intended to extend the leave from 1-2-2008 till 28-2-2008 in order to look after his ailing wife. According to the petitioner this letter was sent through one Govindan who is also an employee in the management. But, the letter was not received by the respondent. So, the petitioner sent the leave letter through the registered post that was received by the management and reply, dated 26-2-2008 was posted on 28-2-2008 it is marked as Ex. P3. So, the extension of leave was not granted by the management. According to the management, the absence of petitioner from 1-2-2008 to 21-3-2008 is unauthorised and the said act is misconduct. So, the management sent a show cause

notice to the petitioner and is marked as Ex. P2. According to the petitioner, no proper charge sheet was framed against him. It is further stated that the notice of enquiry should be sent to the petitioner. Further, the management's representative Mr. Mahadevan was not examined. So, the petitioner was unable to cross-examine him. So, the enquiry was not conducted in proper manner is the argument of the petitioner. According to the respondent, the first show cause notice, dated 21-3-2008 containing the charges levelled against the petitioner and it is show cause notice-cum-charge-sheet. Since, the petitioner did not receive the show cause notice which was published in the Dinamalar newspaper. The petitioner himself had admitted that he has seemed the paper publication and thereafter participated in the enquiry. So, the argument that the show cause notice was not sent to him and the place of enquiry was not informed to him is not a correct one because, he has participated in the enquiry.

7. It is further stated on the side of the petitioner that he has changed his residence and all communications were sent to earlier address. In this regard PW1 deposed as follows:

நிர்வாகத்திற்கு சான்றிட்ட நிலையாணை உள்ளது என்பது எனக்குத் தெரியும். நிலையாணையில் தொழிலாளர்கள் வேலையில் சேரும் போது கொடுக்கும் விலாசத்தைத் தான் அனைத்து தொடர்புகளும் நிர்வாகம் கொடுக்க கடமைப்பட்டுள்ளது. EWS 592, Housing Board, குருமம்பேட விலாசத்தில் தான் நான் வசித்து வந்தேன். அதைத்தான் நிர்வாகத்திடம் அளித்தேன். நான் No.18, First Cross Street, Savuri Nagar, Tharmapuri விலாசத்திற்கு மாறியது உள்விசாரணையின் போது தான் தெரிவித்தேன். நான் தொடர்ந்து பழைய விலாசத்தில் தான் வசித்து வருகிறேன். So, from the evidence of PW1, it is clear he is still living in the old address.

8. It is further stated on the side of the petitioner that the representative of the management was not examined and so, he was unable to cross-examine him. The petitioner appeared in person on 26-4-2008 at 11.00 a.m. for the enquiry. The representative of respondent was also present in the enquiry proceeding. For the first time, petitioner revealed his new address which was promptly recorded. The Enquiry Officer explained in detail about the procedure to be adopted by him both in case of admission and in case of denial of charges. The Enquiry Officer opted for defense assistance and he posted the enquiry on 13-5-2008. On 13-5-2008, petitioner as well as respondent's representative were present. The respondent's representative was examined in the presence of petitioner and Ex. M1 to M3 were marked. Thereafter, the petitioner was specifically questioned on charges levelled

against him. The petitioner specifically admitted the same and gave written letter. His statement was also recorded by the Enquiry Officer on the same day.

The statement of petitioner was marked as Ex. W1 and the letter is marked as Ex.W2. So, the domestic enquiry was not conducted in proper manner is not a correct one. The enquiry report was sent to the petitioner to his new address along with the second show cause notice, dated 16-9-2008. The second show cause notice was also returned as unserved, so it was published in the local Tamil daily Dinamalar on 28-9-2008. Furthermore, with regard to the sickness of his wife he has not produced any documentary evidence. So, the extension of leave was rejected by the management is a correct one. Even after the rejection of his requests for extension of leave and directed him to resume duty, the petitioner never did. Even after receiving the enquiry notice, the petitioner never expressed his desire to resume duty. He remained absent throughout the period of enquiry and never offered to join duty. So, he has abandoned his duty. The VRS was introduced after his dismissal from service.

9. It was not a case of the management that the petitioner was in the habit of taking leave without getting prior permission. In the present case also he has applied for leave and the leave was also granted and the extension of leave alone was not granted by the management. So, the termination of the worker is nothing but an act of victimisation on the part of the management. The petitioner has been continuously in the respondent company without any break for the period of 13 years. It is further stated on the side of the petitioner that the Enquiry Officer had obtained a confession statement from the petitioner and it is violative of Article 20(3) of the Indian Constitution. On the side of the management Ex.R1 and R2 which are the hand-written letters given by PW1 to the Enquiry Officer is marked. Ex.R9 also another hand-written letter given by the petitioner to the respondent after completion of domestic enquiry. Now, the petitioner has stated that those letters were obtained from him by the Enquiry Officer forcibly. While the domestic enquiry is going on, there is no necessity for the Enquiry Officer to get a letter from the delinquent which is a confession statement. Ex.R1, R2 and R9 are obtained while the enquiry is pending. So, there is no possibility to give any importance to Ex.R1, R2 and R9 and this vitiates the enquiry. On perusal of records, it is found that the petitioner was absent from duty unauthorisedly from 1-2-2008 till 28-2-2008. The earlier leave taken by him from 20-12-2007 till 31-1-2008 was granted by the management. There is no record to show that he was in the habit of taking unauthorised leave often. So, the action taken by the management is too much. On the side

of the respondent it is stated that the respondent had suspended work from 21-10-2008 and it is stated on the side of the management that some of the workers went on VRS and some other workers are transferred to various 7 units. So, the present petitioner is entitled for back wages and continuity of service and all other attendant benefits and costs.

10. On the side of the management, it is stated that the petitioner had voluntarily admitted the charges. The voluntary admission is obtained, while the disciplinary proceeding is pending. Those statements are considered to be a confession and so there is no possibility to give much importance to those voluntary admissions of charges. So, the judgments filed on the side of the respondents are not fitting with the facts of the present case. On the side of the petitioner (2012) 4 MLJ 595 (SC) is pressed into service as per the above decision unauthorised absence - Impugned order of dismissal - appeal - Failure on part of the Disciplinary Committee to prove that absence was willful - Absence not amounting to misconduct - Impugned order set aside - Appeal allowed. It is argued on the side of the petitioner that the enquiry conducted by the respondent is not a fair one. Because, subsistence allowance was not given to him during the enquiry period. As per the (2011) 7 MLJ 1275 - Subsistence allowance - Denial of subsistence allowance - When respondent intended to hold fresh enquiry subsistence allowance has to be paid first as it is a mandatory condition to proceed with valid enquiry - Respondent directed to pay the petitioner as claimed.

11. It is argued on the side of the petitioner that no proper procedure was followed before passing order of termination. The obtaining of confession statement from the petitioner by the Enquiry Officer is a violation of procedure as per (2012) 4 MLJ 284 - Allegation of unauthorised absence - No proper procedure followed before passing order of termination - The respondents are bound to frame regular charges and call for explanation - Impugned order cannot be sustained and set aside. Taking into consideration of all the abovesaid judgments and the documents and evidence available before this court, this court is inclined to allow this petition.

12. In the result, the claim petition is allowed with costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 11th day of July 2014.

S. MARY ANSELAM,
Presiding Officer,
Labour Court (FAC), Pondicherry.

List of petitioner's witness:

PW.1 — 9-7-2013 — K. Muralidharan

List of respondent witness :

RW1 — 13-8-2013 — C.S. Youvarajan

List of petitioner's exhibits :

Ex.P1 — Photocopy of the letter of offer of contractual employment, dated 13-12-1993.

Ex.P2 — Photocopy of the letter of offer of contractual employment, dated 11-2-1994.

Ex.P3 — Photocopy of the letter of offer of contractual employment, dated 3-5-1994.

Ex.P4 — Photocopy of the agreement between the petitioner and the respondent, dated 1-8-1994.

Ex.P5 — Photocopy of the letter of offer of employment on Probation, dated 1-2-1996.

Ex.P6 — Photocopy of the letter of offer of confirmation given to the petitioner, dated 31-7-1996.

Ex.P7 — Photocopy of the reply letter given by the respondent, dated 26-2-2008.

Ex.P8 — Photocopy of the letter of show cause notice for unauthorised absence to the petitioner, dated 21-3-2008.

Ex.P9 — Photocopy of the letter sent by the respondent to the D. Mahadevan, appointed as the Domestic Enquiry Officer, dated 21-4-2008.

Ex.P10 — Photocopy of the deposition given by the petitioner during enquiry, dated 13-5-2008.

Ex.P11 — Letter sent by the petitioner to the Enquiry Officer, dated 13-5-2008.

Ex.P12 — Photocopy of the order passed by the Enquiry Officer, dated 20-5-2008.

Ex.P13 — Photocopy of the letter of show cause notice given by the respondent to the petitioner, dated 16-9-2008.

Ex.P14 — Photocopy of the conciliation report given by the Labour Officer (Conciliation), dated 10-2-2012.

List of respondent's exhibits:

Ex.R1 — Photocopy of the letter issued by the petitioner to the respondent.

Ex.R2 — Photocopy of the enquiry report.

Ex.R3 — Photocopy of the letter issued by the petitioner to the respondent, dated 5-2-2008.

Ex.R4 — Original copy of letter of authorisation to Mr. Youvarajan, dated 13-8-2013.

Ex.R5 — Photocopy of the paper publication in Dinamalar news daily effected by respondent intimating the petitioner about the date of enquiry, dated 17-4-2008.

Ex.R6 — Photocopy of the findings of Enquiry Officer in English and in Tamil, dated 20-5-2008.

Ex.R7 — Photocopy of the second show cause notice given by respondent to the petitioner, dated 16-9-2008.

Ex.R8 — Photocopy of the paper publication in Dinamalar news daily effected by respondent intimating the petitioner 2nd show cause notice, dated 16-9-2008.

Ex.R9 — Copy of letter addressed by petitioner to respondent in response to 2nd show cause notice, dated 29-9-2008.

Ex.R10 — Photocopy of the dismissal order issued by respondent to the petitioner, dated 13-10-2008.

Ex.R11 — Photocopy of the letter given by respondent to the petitioner with RPAD slip, dated 18-11-2008.

S. MARY ANSELAM,
Presiding Officer,
Labour Court (FAC), Pondicherry.

GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(G.O. Rt. No. 118/Lab./AIL/J/2014, dated 13th August 2014)

NOTIFICATION

Whereas, an award in I.D.(L) No. 33/2010, dated 6-6-2014 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Delta Power Solutions (India) Ltd., Puducherry and Delta Power Solutions (India) Ltd. Thozhilalar Sangam, over non-employment of 216 employees has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said award shall be published in the official gazette, Puducherry.

(By order)

S. THAMMU GANAPATHY,
Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PONDICHERRY

Present : Tmt. S. MARY ANSELAM, M.A., M.L.,
Presiding Officer (FAC),
Labour Court.

Friday, the 6th day of June 2014

I.D. (L) No. 33/2010

T. Jayakumar,
Delta Power Solutions (India) Pvt. Ltd.
Thozhilalar Sangam,
Puducherry. . . Petitioner

Versus

- (1) The Managing Director,
Delta Power Solutions (India) Pvt. Ltd.
- (2) Sooriya,
M/s. Sri Enterprises.
- (3) G. Gnanasegar,
M/s. Saraswathy Agency . . Respondent

This industrial dispute coming on 30-5-2014 for final hearing before me in the presence of Thiruvalargal S. Nagarajan, Raja and A.P. Ilangovan, Counsel for the petitioner, Thiruvalargal L. Sathish, T. Pravin, S. Velmurugan and V. Veeraragavan, Counsel for the 1st respondent, Respondent No. 2 and 3 called absent and set *ex parte*, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following:

AWARD

This industrial dispute has been referred as per the G.O. Rt. No. 195/ AIL/Lab./J/2010, dated 27-9-2010 for adjudicating the following :

- (1) Whether any employer and employee relationship exists between the 216 workers (as mentioned in the Annexure) belongs to M/s. Delta

Power Solutions (India) Pvt. Ltd. Thozhilalar Sangam and the management of M/s. Delta Power Solutions (India) Pvt. Ltd., Thirubuvanai Village, Puducherry?

(2) If exists, whether the dispute raised by the Delta Power Solutions (India) Pvt. Ltd. Thozhilalar Sangam, over charter of demands such as wage revision, transport allowance, canteen facilities and refusal of employment is justified or not?

(3) If justified, what relief the workers are entitled to?

(4) To compute the relief, if any, awarded in terms of money, if it can be so computed?

2. The facts giving rise to this industrial dispute as stood exposed from the claim petition runs thus :

The petitioner employees (206 in strength) had placed a charter of demands during June 2009 to the 1st respondent management such as wage revision, free canteen, free transport and other fundamental requirements but the 1st respondent management was utter disregard with the above demands and was blindly refused them. The 1st respondent management was with an implied threat to every employee if he who extent co-operation to emerge an existence of a trade union should meet a dire consequence of termination of employment without any cause and reason. The 1st respondent management was engaged more than 500 employees to the functional and operational process per day. The petitioner employees are permanent and so directly appointed and engaged to employment by the 1st respondent management herein. The 1st respondent management was utter failure in compliance with the statutory obligations under Factories Act.

The 1st respondent management was with occult handling of the slavery and bonded labour elements in treating the petitioner employees since from its commencement of its production. The 1st respondent management was not even provide appropriate drinking water facility, toilet facility to its employees and in fact there were more than 300 women employees were engaged in production every day. All the petitioner employees were not paid on salary day with proper wage receipt. No ESI protection and PF securities to the employees were provided. Apart from the above the safety measures to the employees were not in practice and hence abrupt accidents are lot frequently. Also working hours, leave, weekly off, yearly bonus, *ex gratia* etc. The 1st respondent management having known of forming trade union by petitioner employees started to victimise them and lest to care their charter

of legal demands. So, the 1st respondent management decided to exploit to petitioner employees by not providing employment to them but with different kinds of tortures. The petitioner union had lodged a series of complaints to the police officials and Labour Department on time and against the atrocities of 1st respondent management. The 1st respondent management was brought an utter lie abruptly that it was not an employer to the petitioner employees as they had been employed by 2nd and 3rd respondent herein. In fact the petitioner employees had never seen 2nd and 3rd respondents anywhere in any way under the 1st respondent management. There were few employees were employed indirectly through some contractors but the fact is that petitioner employees were never employed or engaged through the 2nd and 3rd respondent herein.

The 1st respondent management herein is with the utter lie to defeat the ends of justice to the petitioner employees through the abuse of process of law and behavior. The petitioner employees (206 in strength) have lost their regular employment with the 1st respondent management but with the only impeccable, insolent and irretrievable attitude of the 1st respondent management. The lives of the petitioner employees is in stake and dark due to non-employment by the 1st respondent management without valid reason. The 1st respondent management is a miscreant to the life of the petitioner employees and failed to be a qualified employer against the labour welfare measurements and protection in a civilised society. Also it has taken the laws in hand to destruct the valuable life of the petitioner employees shall be punished with the iron limbs of the law to strike a moral teach to the society. Also to ensure a fare legal force against victimisation of labour it is necessary to pass an order of reinstatement of the employment of the petitioner employees (206 in strength) under 1st respondent management as regular employees with the back wages with continuity of service subject to periodical increments was in force from time to time along with the other benefits and early benefits to petitioner employees.

3. *Per contra*, traversing the averments the claim statement, the respondent filed the counter with the averments which runs thus of first respondent, R2 and R3 remain *ex parte*.

The claim petition also does not reveal the date of joining of 206 workers, the date from which they are working in 1st respondent's factory; their respective

employment number; their length of service with respondents; their date of termination; 1st respondent commenced its production in Puducherry in November 2007 after strictly complying with all the statutory requirements. It obtained necessary licence from licensing authorities to engage contractors for such activities. The 2nd and 3rd respondents are registered manpower agencies in Pondicherry. They are direct employers of many workers and supply manpower to various companies in Puducherry. They have huge number of workers in their rolls. The 1st respondent entered into periodical contracts for supply of manpower for its peripheral activities with 2nd and 3rd respondents herein. 2nd and 3rd respondent had also obtained licences for supplying contract workers to 1st respondent *vide* their contract licence on 22-10-2008. The 2nd and 3rd respondents had separate ESI and EPF code and contributions for their workers were paid directly by them to ESI and EPF authorities. Separate attendance register and muster rolls were maintained by them and salaries were paid directly by them, which were supervised by this respondent as per the Contract Labour (Regulation and Abolition) Act, 1972.

All the 206 workers mentioned in the reference by Government were direct employees of 2nd or 3rd respondents and they were never in direct employment with 1st respondent. Appointment orders for each of the workers covered in this dispute were issued directly by either 2nd or 3rd respondent and their service conditions were regulated by 2nd and 3rd respondents in accordance with their appointment letters and policies of 2nd and 3rd respondents respectively. On 20-7-2009 a group of contract workers engaged themselves in illegal flash strike demanding wage hike leading to civil suit in OS No. 708/2009 for injunction, registration of FIR at Thirubuvanai Police Station under section 151 of Cr. P.C. and ultimately cancellation of contract licence of 2nd and 3rd respondents. The petitioner union raised conciliation with Labour Officer (Conciliation) where 1st respondent made is abundantly clear that none of the members of petitioner union were ever engaged by it and they were only contract workers 2nd and 3rd respondent and therefore there is absolutely no industrial dispute between this respondent and the petitioner union.

The 2nd and 3rd respondent also appeared before Conciliation Officer and submitted their representations on 16-11-2009 and 20-11-2009 admitting that the members of petitioner union were their employees and they were willing to give them employment at some other company. All the members involved in dispute were the employees of either 2nd or 3rd respondent, which is also fully known

to them from their appointment order, salary slips and the identity card issued to them. The workers involved in this industrial dispute are also the members of ESI and EPF under their respective contractors and they signed their muster rolls and wage registers maintained by the contractors. The dispute is essentially between the petitioner and 2nd and 3rd respondents and 1st respondent has absolutely nothing to be said in the dispute. There is absolutely no direct relationship of employer and employee between the petitioner and this respondent and therefore no reliefs can be claimed by against this respondent.

4. On the side of the petitioners, P.W.1 was examined, and the side of the respondent R.W.1 was examined. On the petitioners side Ex.P1 to Ex.P20 were marked. On the side of the respondent, Ex.R1 to Ex.R30 were marked.

5. *The point for consideration is:*

Whether the industrial dispute can be allowed?

6. *On this point:*

The dispute is with the reference to the non-employment of the member by R1. The prayer is for reinstatement of 206 employees under R1 as regular employees with backwages, with continuity of service and other benefits and a just compensation of ₹ 5,00,000 for mental agony. According to the petitioners they were appointed by the first respondent company and he engaged them in the manufacture of various telecom equipments and other electronic components ever since of its commencement of production in Puducherry. Admittedly, since from 2008 the petitioners were admitted in the manufacturing process of the R1 company and thereby they got their regular service under the R1 management. The R1 was not in the habit of issuing in the letter of appointment and appointment order in any of the petitioners. During 2009, the petitioners submitted their charter of demands for revision of wages, welfare measures, canteen facilities and other measures before R1 company. But no response from R1, so the petitioners started a legal strike, the dispute was taken to the conciliation and other labour officials. The first respondent made a representation that the petitioners belong to R2 and R3. Hence, the industrial dispute arose.

7. According to the petitioner, they are the employees of R1 from 2008. RW.1 claims that all the petitioners were under the contractors and they were engaged into for loading and unloading, cleaning machinery and housekeeping activities and so on. RW.1 deposed that they employed approximately 150 employees per day to

the manufacturing. RW1 clearly admits that the petitioners are engaged for loading and unloading cleaning machineries and so on. The appointment order, salary slip and identity card shows that the petitioners are under direct employment with the R2 and R3. They were members of ESI and EPF under R2 and R3 and they signed the muster rolls and wage registers maintained by the contractors. The ESI and PF contribution application forms submitted by each individual workers disclosed the name of the employer. There is absolutely no relationship between the employees and R1 as employer and employee. PW.1 in his evidence deposed as follows:

Ex.P17 - ன் படி அரசாங்கம் மனுவில் கண்ட தொழிலாளர்களுக்கும் எதிர் மனுதாரர்களுக்கும் தொழிலாளி மற்றும் முதலாளி உறவுமுறை உள்ளதா என்பதை தீர்த்துவைக்கத்தான் அனுப்பினார்கள் என்றால் சரிதான். R1 நிர்வாகத்தில் பணிபுரிந்ததற்காக எந்தவித ஆவணமும் தாக்கல் செய்யவில்லை என்றால் சரிதான் எனக்கு பணிநியமன உத்தரவு, சம்பள ரசீது R1 வழங்கவில்லை.

Further, it is stated on the side of the respondent that PW.1 is not competent to depose and file claim statement. So, admittedly no record was filed on the side of the petitioner to prove that they are the employees under R1.

8. According to the respondent R1 entered into periodical contracts for supply of manpower with R2 and R3. The contracts were periodically renewed. Both R2 and R3 had separate ESI and EPF code and contributions for their workers were paid directly by two contractors. Separate muster rolls and attendance register were maintained by the contractors and the salaries was paid to the contractors. All the 206 employees were direct employees of R2 and R3. Appointment orders were directly issued by their respective contractors. So, the 206 employees had no direct relationship with R1. The agitating contract labourers filed O.S. 708/2009 before Principal District Munsif, Puducherry, for other reliefs including injunction. It was transferred to Additional Sub-Judge and is still pending. The agitating contract labourers became violent and R1 was compelled to lodge series of complaints. F.I.R was registered at Thirubuvana Police Station under section 151 of Cr.P.C. R1 asked the respondent not to send the agitating workers to its factory. So they had withdrawn them from R1's factory. The petitioners raised conciliation with the Labour Officer Conciliation failed and matter was referred to Labour Court.

9. The list of persons of R1 employees are marked as Ex.P16. The petitioners are expected to prove their case. They have not proved the point that they are the direct employees under R1. The muster roll of R2 is marked. EPF was paid by R2 for all the workers. Ex.R1 and R2 are the appointment orders. It is argued on the side of the respondent that PW1 is not competent to give evidence and to file the claim petition. It is deposed by PW1 as follows:

R1வசம் ஏற்பட்ட பிரச்சனை குறித்து சங்கத்தலைவர் கலைவேந்தன் என்பவர் தான் கடித தொடர்பு வைத்துக் கொள்வார் என்றால் சரிதான். எங்கள் சங்கத்தலைவர் கலைவேந்தன் கொடுத்தது தான் என்றால் சரி. அதில் உள்ள கையொப்பம் அவருடையது தான். Ex.R1 and R2 கலைவேந்தன் கையொப்பம் இட்டுள்ளார். R2 சம்பள பதிவேட்டின் ஒரு பக்கம். Ex.R2-ல் ஒப்பந்தக்காரர் பெயர் குறிப்பிடப்பட்டுள்ளது என்றால் சரிதான். அவர் தான் R2 சங்கத்தின் சார்பாகவும் தனிப்பட்ட முறையிலும் R1 வசம் எந்தவித கடிதமும் கொடுக்கவில்லை என்றால் சரிதான்.

So, in this case Kalaiventhan is the competent person to give evidence on behalf of the 206 workers and PW.1 is not a competent person. Ex.R1 and R2 marked through PW1 is the wage slip of Mr. Kalaiventhan, the President of petitioner union, which is issued by R3 as a contractor. The said slip was acknowledged by him admitting himself to be the employee of R3. R4 is the licence given to R1, permitting to engage R2 and R3 as contractors under section 7(2) of Contract Labour (Regulation and Abolition) Act. As per Ex.R4 with effect from 23-9-2008, R1 was permitted to engage 170 and 130 workers respectively through R2 and R3 as contract workers for the purpose of "loading of finished goods and unloading raw materials, cleaning outside manufacturing process, housekeeping and gardening". Ex.R9 and R15 are the contract licences of R2 and R3 respectively under section 12 of CLRA, permitting to supply manpower to R1 for the purposes of "loading of finished goods and unloading raw materials, cleaning outside manufacturing process, housekeeping and gardening". Ex.R10 and R16 are the legal and valid contracts for manpower supply between R1 and R2 and R3. Ex.R11 is the ESI contribution paid by R2 from April to September 2009 for its 338 workers including some of the workers referred in the dispute.

10. Ex.R12 is EPF contribution paid by R2 for all 613 workers employed by them at various organisations including at R1's factory. The names listed in the reference of present dispute is also found in Ex.R12. Ex.R13 is the muster roll from February 2009, April 2009 maintained by R2 for contract workers engaged in R1's factory. Ex.R14 is the appointment order of D. Kalaivendan, the President of petitioner union issued by

R2, confirming that he was in direct employment with R2. Ex.R30 is the wage slip given by R3 to one of its worker namely Kanniyappan, who is also one of the referred employee in the present case. Ex.R19 is the returns submitted by R3 to ESI Corporation for its 544 workers from April to September 2009 out of whom hardly 150 workers were employed as contract workers in R1's factory. The names listed in the reference of present dispute are also found in Ex.R19. Similarly Ex.R29 is the PF contribution paid by workers in its own name whereby majority of workers listed in the reference in dispute are found. Ex.R27 is the bill dated 19-7-2010 submitted by R3 to R1 for the contract amount as per contract agreement, which was utilised for payment of salary to the petitioner workers. Ex.R28 is the letter given by R1 to R2 and R3 cancelling the manpower supply contract. So, the above mentioned documents clearly prove that the 206 workers are employees under R2 and R3 and not the direct employees of R1.

11. The Government of Puducherry has not issued any notification prohibiting engagement of contract labour in the areas of loading of finished goods and unloading raw materials, cleaning outside manufacturing process, housekeeping and gardening that is why appropriate licences were given to R1, R2 and R3 by the Labour Department.

12. The first and second respondent had necessary licences to hire contract workers and supply contract workers. Labour Court cannot decide on abolition of contract labour but they can decide on genuineness of contract labour. If a contract for supply of manpower is *bona fide* and genuine and complies with all the requirements under Contract Labour (Regulation and Abolition) Act, such contract workers cannot be deemed to be regular employees of the principal employer. In the present case, it is the case of the petitioner that they are the direct employees under R1. It is not their case that the contract between principal employer and contractor was a sham and nominal contract. The records filed on the side of the respondents clearly prove that the 206 employees are the employees under R2 and R3 and not under R1. Further R1 has clearly proved his contract with the R2 and R3 and that contract is *bona fide* and genuine. So there is no employer and employee relationship between the petitioner under R1, it is submitted on the side of the first respondent that during the pendency of present dispute R1 has closed his unit at Pondicherry and obtained necessary permission of Labour Department which is also admitted by the petitioner. Ex.P18 is the letter submitted by R1 seeking permission of closure application in Puducherry. So the

factory is not functioning in Puducherry now. Taking into consideration of all the above said aspects, it is decided that there is no direct relationship of employer and employee between the petitioner and first respondent and so claim petition filed by the petitioner is dismissed.

13. In the result, the claim petition is dismissed. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 6th day of June 2014.

S. MARY ANSELAM,
Presiding Officer,
Labour Court (FAC), Pondicherry.

List of petitioner's witness:

PW.1 — 30-11-2012 — Jayakumar

List of respondent's witness:

RW.1 — 11-1-2013 — Nandan Kumar Baranwal

List of petitioner's exhibits:

- Ex.P1 — Copy of resolution for formation of petitioner union, dated 26-6-2009.
- Ex.P2 — Copy of complaint by petitioner to Women's Police Station, dated 22-7-2009.
- Ex.P3 — Copy of complaint by petitioner to Senior Superintendent of Polic, dated 23-7-2009.
- Ex.P4 — Copy of complaint forwarded by petitioner to Human Rights Commissioner, dated 23-7-2009.
- Ex.P5 — Copy of application for registration of petitioner union, dated 23-7-2009.
- Ex.P6 — Copy of complaint by petitioner to Labour Commissioner, dated 23-7-2009.
- Ex.P7 — Copy of letter by petitioner to Superintendent of Police, dated 28-7-2009.
- Ex.P8 — Copy of complaint by petitioner to the Secretary, Labour Department, dated 29-7-2009.
- Ex.P9 — PF contribution information from PF Commissioner, dated 29-7-2009.
- Ex.P10— Copy of information from Ministry of Corporate Affairs, dated 29-7-2009.
- Ex.P11— Copy of information from Public Works Department, dated 29-7-2009.
- Ex.P12— Copy of remainder letter to Labour Commissioner, dated 6-8-2009.

Ex.P13— Notice by Labour Officer (Conciliation), dated 17-9-2009.

Ex.P14— Copy of certificate of registration of petitioner union, dated 24-11-2009.

Ex.P15— Copy of complaint to Conciliation Officer, dated 26-3-2010.

Ex.P16— Conciliation failure report, dated 27-7-2010.

Ex.P17— Reference order of Labour Department, dated 27-9-2010.

Ex.P18— Objection by petitioner against closure application, dated 9-5-2012.

Ex.P19— Copy of complaint by present employees to Labour Commissioner, dated 3-5-2012.

Ex.P20— Copy of identity card of Nandan Kumar Baranwal in Delta Power Solutions (India) Pvt. Ltd. (RW1 Cross), dated 25-3-2013.

List of respondent's exhibits:

- Ex.R1 — Form - 2 in nomination and declaration form (PW1 Cross), dated 5-8-2008.
- Ex.R2 — Form-XVII in register of wages for the month of April 2009, dated 21-12-2012.
- Ex.R3 — Photocopy of the certified standing orders of 1st respondent, dated 26-3-2010.
- Ex.R4 — Photocopy of the contract labour registration certificate of 1st respondent with amendment, dated 24-9-2008.
- Ex.R5 — Photocopy of the ESI registration certificate of 1st respondent, dated 22-7-2008.
- Ex.R6 — Photocopy of the EPF registration certificate of 1st respondent, dated 8-1-2008.
- Ex.R7 — Photocopy of letter written by ESIC to 2nd respondent, dated 28-2-2006.
- Ex.R8 — Photocopy of letter written by ESIC allotting separate code to 2nd respondent, dated 22-7-2008.
- Ex.R9 — Photocopy of the licence issued to 2nd respondent under CL (R & A) Act, 1970 along with its renewal dated 22-10-2008.
- Ex.R10— Photocopy of the contract for manpower services between 1st respondent and 2nd respondent, dated 1-4-2009.
- Ex.R11— Photocopy of ESI returns submitted by 2nd respondent for contribution period from April 2009 to September 2009 in Employer's code No. 51-55446-101/BO/PDY, dated 18-12-2009.

- Ex.R12— Photocopy of EPF contribution submitted by 2nd respondent from April 2009 to March 2010 for all its employees under code No. PC/1711.
- Ex.R13— Photocopy of register of muster rolls maintained by 2nd respondent from February 2009 to April 2009.
- Ex.R14— Photocopy of joining form and appointment order of D. Laavemdam issued by 2nd respondent, dated 5-8-2008.
- Ex.R15— Photocopy of the licence issued to 3rd respondent under CL (R&A) Act, 1970 along with its renewal, dated 22-10-2008 to 2-11-2009.
- Ex.R16— Photocopy of the contract for manpower services between 1st respondent and 3rd respondent, dated 31-3-2009.
- Ex.R17— Photocopy of letter written by ESIC to 3rd respondent, dated 17-8-2004.
- Ex.R18— Photocopy of letter written by EPF to 3rd respondent, dated 15-9-2004.
- Ex.R19— Photocopy of ESI contribution made by 3rd respondent from April 2009 to September 2009 in Employer's code No. 55-00-042102-1001/BO/PDY, dated 15-6-2010.
- Ex.R20— Photocopy of the letter written by 1st respondent to Labour Officer (Conciliation), dated 28-10-2009.
- Ex.R21— Photocopy of the FIR registered by 1st respondent against the contract workers, dated 25-8-2009.
- Ex.R22— Photocopy of the information laid by SHO, Thirubuvanaï to Subdivisional Magistrate (South), Villianur, Puducherry on the illegal strike by contract workers, dated 25-8-2009.
- Ex.R23— Photocopy of the representations given by the 1st respondent to the Lieutenant-Governor of Puducherry, Minister of Labour and Chief Minister, Puducherry regarding illegal strikes by contract workers, dated 14-8-2009.

- Ex.R24— Photocopy of the complaint lodged by the 1st respondent to Labour Commissioner, Labour Department, Puducherry regarding illegal strike by contract workers, dated 26-8-2009.
- Ex.R25— Photocopy of the complaint lodged by the 1st respondent to SHO, Thirubuvanaï regarding illegal strike of contract workers along with the letters given by some of its workers, dated 25-8-2009.
- Ex.R26— Photocopy of the complaint given by the 1st respondent to the SHO, Thirubuvanaï, Circle Inspector, Nettapakkam, Superintendent of Police (Rural), dated 21-7-2009.
- Ex.R27— Photocopy of the bills submitted by the 3rd respondent to the 1st respondent towards payment of salary for its staffs, dated 19-7-2010.
- Ex.R28— Photocopy of letter written by 1st respondent to 2nd and 3rd respondent informing them about their illegal strike of their workers (4 Nos.), dated 21-7-2009.
- Ex.R29— Photocopy of the PF contribution paid by 3rd respondent, dated 9-9-2009.
- Ex.R30— Photocopy of the salary slip given by 3rd respondent to one Kanniappan, dated April 2009.

S. MARY ANSELAM,

Presiding Officer,
Labour Court (FAC), Pondicherry.

GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(G O. Rt. No. 116/AIL/Lab/J/2014, dated 13th August 2014)

NOTIFICATION

Whereas, the Government is of the opinion that an industrial dispute has arisen between the management of M/s. TTK Protective Devices Limited and Packwell Packaging Products Limited and United Labour Federation, over charter of demands in respect of the matter mentioned in the Annexure to this order;

And whereas, in the opinion of the Government, it is necessary to refer the said dispute for adjudication;